

U.S. Pat. Appl'n 10/722,617
Amendment

REMARKS

This submission is submitted in response to the Examiner's Office Action of May 18, 2005 and is believed to be fully responsive thereto. No new matter has been added to the application.

The Examiner indicated that Claims 8 and 13-16 were objected to but allowable if appropriate rewritten. Applicant has incorporated the subject matter of Claim 8—that the head is substantially U-shaped and that the battery is disposed in between the arms of the U— into independent Claims 1, 23, and 26. These claims and the claims that depend therefrom are now allowable.

The Examiner gave no patentable weight to Claim 3, which recited that the "main body comprises a conventional pre-made blank key with said cutout formed via one of cutting or punching." The Examiner indicated that "patentability of a product does not depend on its method of production." While Claim 3 is now allowable at any rate (since it depends from Claim 1), it is respectfully pointed out that the CCPA and Federal Circuit have ruled the opposite to the Examiner's position, i.e., that product-by-process claims are patentable. See, e.g., *in re Luck*, 177 USPQ 523 (CCPA 1973); *In re Thorpe*, 777 F.2d 695, 227 USPQ 964 (Fed. Cir. 1985). See also MPEP § 2173.05(p) (attached) ("A product-by-process claim, which is a claim that defines the claimed product in terms of the process by which it is made, is proper.")

Also, the Examiner rejected Claims 4-6 as obvious for teaching merely ornamental features. While these claims are now allowable also (they depend from Claim 1), Applicant

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respectfully points out that the provision of colored casings and matching or contrasting lights on the casings is not ornamental but functional: it allows the user to identify his/her keys much more readily.

In view of the foregoing, Applicant submits that Claims 1-7, 9-12, and 14-26 recite patentable subject matter and that the application is in condition for allowance. Applicant respectfully requests a telephonic interview with the Examiner to discuss any further changes that might be deemed necessary. Prompt and favorable action toward the issuance of a patent is earnestly solicited and believed to be fully warranted. Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this case, and any additional required fee, except for the Issue Fee, for such extension may be charged to Deposit Account No. 02-2105.

Dated: September 19, 2005

Respectfully submitted,



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